

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2012-0022**

ADOPTING A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM
PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE MISSION SPRINGS
WATER DISTRICT (DISTRICT), AD-12 AREA F & M-1 SEWER CONSTRUCTION
PROJECT (PROJECT), CWSRF PROJECT NO. C-06-4250-310

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on March 17, 2009, adopted the amended "*Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities*" (Policy);
2. The Project is listed on the CWSRF Program Priority List in Priority Class D;
3. The Division of Financial Assistance (Division) issued a [Facilities Plan Approval \(FPA\)](#) for the District's Project, and the District agreed with the content and conditions of the FPA;
4. As outlined in the Amended CWSRF Intended Use Plan (IUP) for SFY 2010/2011, adopted by the State Water Board on May 17, 2011, \$97,770,482 in FFY 2010 and FFY 2011 principal forgiveness is available to two (2) categories of communities:
 - 1) Small, Disadvantaged Communities with Substantial Water Quality Investment; and
 - 2) Other Communities. It is anticipated that an additional \$8.4 million in principal forgiveness will be available to these categories in FFY 2012;
5. The City's application was complete and ready for a commitment prior to adoption of the FFY 2012 CWSRF IUP on March 20, 2012; therefore, the City's principal forgiveness amount may be based on the criteria in the previous version of the IUP;
6. As a small (less than 20,000 persons receiving sewer services), severely disadvantaged community (median household income [MHI] less than 60 percent of the statewide MHI) with combined wastewater user rates and assessment district fees more than 1.5 percent of the community's MHI, the District may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness;
7. The District is the lead agency under the California Environmental Quality Act (CEQA) and prepared an Initial Study and Mitigated Negative Declaration (IS/MND) for a larger project (the Project is a subset of the larger project). The District complied with CEQA and the CEQA guidelines and circulated the IS/MND through the State Clearinghouse (State Clearinghouse No. 1998091062) and the public;

8. Adequate public participation was provided through the CEQA review process;
9. The District adopted the IS/MND and a Mitigation Monitoring and Reporting Program and approved the larger project (which includes the Project) on February 16, 1999;
10. The District filed a Notice of Determination with the Governor's Office of Planning and Research on March 1, 1999 and the Riverside County Clerk on March 4, 1999, for the IS/MND;
11. The District prepared an addendum to the IS/MND (Addendum No. 1) to provide an updated environmental analysis, and address the Project. The District adopted the Addendum No.1 and approved the Project updates on March 7, 2011;
12. The District filed an Notice of Determination with the Riverside County Clerk on March 8, 2011, and Office of Planning and Research on March 9, 2011, for the Addendum No.1;
13. The environmental documents provided an adequate disclosure of the environmental relationships of all water quality aspects of the Project. The Project will not result in any significant adverse water quality impacts;
14. With the understanding that the District will be required to implement the specified mitigation measures and obtain the necessary permits and approvals, the City has complied with all pertinent state and federal environmental laws. Special conditions will be included in Exhibit D of the District's CWSRF financing agreement to ensure compliance with Section 106 of the National Historic Preservation Act, and the Migratory Bird Treaty Act; and
15. The District is currently involved in a lawsuit related to a potential rate rollback.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF PFC of \$10,319,367 for the District's Project, with \$5,159,684 in principal forgiveness, and a term of twenty years at an interest rate of half of the State's General Obligation bond rate.
2. Directs Division staff to allocate \$10,319,367 consistent with the construction schedule and availability of funds.
3. Conditions this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by October 31, 2012. In accordance with Section IX.K.3 of the Policy, the Deputy Director of the Division (or designee) may approve up to a 120 day extension for good cause.

4. Conditions this approval to require the District to provide immediate notification to the State Water Board Project Manager if the ongoing litigation will jeopardize the District's ability to repay the CWSRF financing, and provide the State Water Board Project Manager with a copy of any settlement agreements or court rulings within 15 days of such event.
5. Conditions this approval to require the District to provide the following updated legal opinions. The Division will not amend the financing agreement to incorporate bid costs or authorize the disbursement of funds for construction until these legal opinions have been submitted:
 - An updated legal opinion certifying (1) that the District has sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, maintain, repair, monitor, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer, and (2) that the District has obtained all encroachment permits necessary to implement the Project; and
 - A legal opinion (1) explaining the status of and providing the anticipated timeline for resolution of the pending litigation, and (2) certifying that there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the District's payment source, (b) the ability of the District to agree to pay the CWSRF financing, or (c) the ability of the District to manage and implement the Project.
6. Conditions this approval to require the District to complete a pre-construction survey 30 days prior to construction activities to avoid potential impacts to migratory birds, in accordance with the Migratory Bird Treaty Act.
7. Conditions this approval to require the District to comply with the following, in accordance with Section 106 of the National Historic Preservation Act:
 - Require archaeological monitoring for all excavation into undisturbed soils in Service Area F east of Palm Drive;
 - Prepare a monitoring plan that includes implementation procedures for inadvertent discoveries prior to any trenching east of Palm Drive in Service Area F; and
 - Notify the State Water Resources Control Board Cultural Resources Officer of any discoveries of cultural material and consult with the Cultural Resources Officer on any subsequent resource evaluation and treatment. Consultation with the State Historic Preservation Officer may be necessary if a newly discovered resource meets the criteria of eligibility for the National Register of Historic Places.
8. Conditions this approval, as determined by the District's credit review, with the following:
 - The financing agreement shall be secured on parity with all outstanding debt;

- The District shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.25 times the total annual debt service;
- The District shall establish a restricted Reserve Fund equal to one year's debt service prior to the construction completion date. The Reserve Fund shall be maintained for the full term of the Financing Agreement;
- The District shall not incur future senior debt. The District's future debt may be issued on parity with CWSRF debt if policy conditions are met (Section X, G1); and
- The financing agreement shall be limited to the maximum amount of \$10,319,367, with \$5,159,684 in principal forgiveness, unless new information supporting the credit review changes and a supplemental credit review is performed.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 5, 2012.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board